

**Thomas Neches & Company LLP**

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*Gail Hahn, et al. v. Massage Envy Franchising, LLC*

**United States District Court  
Southern District of California  
Case No. 3:12-cv-00153-DMS-BGS**

**Report of Thomas Neches Valuing Settlement Benefits**

**April 20, 2015**

## Background and Assignment

I was retained in the matter *Gail Hahn, et al. v. Massage Envy Franchising, LLC* (“this lawsuit”) on behalf of plaintiffs to determine plaintiffs’ and class members’ restitution or economic damages, assuming liability has been proved. Previously in this lawsuit, I prepared a declaration dated March 30, 2014, an expert report dated April 11, 2014, and a second expert report dated May 2, 2014. By this reference, the opinions stated and documents relied upon in the declaration and previous reports are incorporated into this report.

In December 2014, the parties in this lawsuit entered into a Stipulation of Class Action Settlement and Release (“Settlement Agreement”). The terms of the Settlement Agreement provide that all Former Members (as defined in paragraph I.M. of the Settlement Agreement)<sup>1</sup> have 60 days from the date they receive notice of the Settlement Agreement to submit a request for any unutilized massages to be reinstated, and 180 days from that day to utilize any reinstated massages issued.<sup>2</sup> The number of reinstated massages each Former Member may receive is as follows:

Number of Reinstated Massages Available to Former Members

Number of Unutilized Massages ("N")	Length of Reinstated Massage	Number of Massages Reinstated ("R")
1	50 minutes	1
2	90 minutes	1
3 or more	50 minutes	$R = 0.75 \times N$ (rounded down to the nearest whole number)

The terms of the Settlement Agreement also provide that for two years after the effective date of the Settlement Agreement, all Current Members (as defined in paragraph I.H. of the Settlement Agreement)<sup>3</sup> will have 60 days (rather than the previous policy of 30 days) after cancellation, non-renewal, or termination for nonpayment to redeem any unutilized massages.<sup>4</sup>

Counsel for Former Members and Current Members (“Claimants”) requested me to determine the economic value of the services Claimants may or will obtain as a result of the Settlement Agreement. My findings and opinions are summarized in this report, which has been prepared in accordance with Federal Rule of Civil Procedure 26(a)(2)(B).

## Qualifications, Publications, Compensation, Prior Expert Testimony and Documents Relied Upon or Considered

I am a Certified Public Accountant, Accredited in Business Valuation, a Certified Valuation Analyst, a Certified Fraud Examiner and am Certified in Financial Forensics. I received my BA in Mathematics and Literature from UC San Diego and my MS in Operations Research from UCLA. I have more than thirty-seven years of experience performing accounting, financial, valuation and statistical analyses. Other disclosures regarding my qualifications are presented in **Exhibit A**.

A list of all publications I have written is attached as **Exhibit B**. My compensation in this matter is at a rate of \$575.00 per hour and is not contingent on the outcome of this lawsuit. A list of all cases in which I have testified as an expert at trial or in deposition for the past four years is attached as **Exhibit C**. A list of all documents and other data sources I reviewed or considered (in addition to the documents and other sources previously disclosed, which are incorporated by reference) is attached as **Exhibit D**.

## Findings and Opinions

### Summary

- A reasonable estimate of the value of each 50-minute massage obtained from the Settlement Agreement is \$56.00.
- A reasonable estimate of the value of each 90-minute massage obtained from the Settlement Agreement is \$82.00.
- A reasonable estimate of the value to Former Members of reinstatement of unutilized massages is \$179,000,000.<sup>(a)</sup>
- A reasonable estimate of the value to Current Members of receiving an additional 30 days after leaving Massage Envy to redeem any unutilized massages is \$36,000,000.

A reasonable estimate of the value of each 50-minute massage obtained from the Settlement Agreement is \$56.00.

Using its Millennium Computer System, with which the Court is familiar,<sup>5</sup> Massage Envy performed statistical studies of Former Members who were California residents. One study captured the distribution of monthly dues rates paid by California-resident Former Members.<sup>6</sup>

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(a) This calculation assumes: (1) 100% participation by claimants, and (2) no claimant will utilize more than six reinstated massages during the 180-day redemption period.

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From this study I calculated that the weighted average of the monthly dues paid by this population is \$56.55. This calculation is presented in **Exhibit E**.

Because of the large sample size and the diversity of the population in California, it is reasonable to assume the population of California-resident Former Members is a representative sample of the monthly dues paid by all Former Members. Further, as explained below, it is reasonable to use the average monthly dues paid by Former Members, with one adjustment, to represent the value of a 50-minute massage obtained from the Settlement Agreement.

Because members may receive goods and services in addition to a monthly massage in return for their monthly dues, arguably the value of a single massage is less than the amount of total monthly dues.<sup>7</sup> However, a quick review of these benefits easily demonstrates that – with one exception – these benefits add little or no value to the monthly massage purchased.

The exception is the fact that monthly dues allow members to obtain a second massage during a month at a discounted price. As shown in **Exhibit F**, the price of the second massage varies from \$39.00 to \$59.00. As calculated in **Exhibit E**, incorporating the ratio of second massage price to monthly dues paid by California-resident Former Members yields a weighted average cost of a second massage during a month of \$41.11. As calculated in **Exhibit G**, the average cost per massage for members who take two or more massages per month is \$48.83. However, less than 7% of Massage Envy members regularly take two or more massage per month.<sup>8</sup> As calculated in **Exhibit G**, the overall average cost per massage for California-resident Former Members therefore is \$56.01 (\$0.54 less than average monthly dues paid of \$56.55). Rounding down to the nearest dollar yields a reasonable estimate of the average cost per massage of \$56.00.

What about the other benefits included in the monthly dues? The table below summarizes these potential benefits included in monthly dues and the reasons they offer little value above and beyond the first and (very occasionally) second massage.

Benefit	Discussion
Discounts on products and services	In practice, such discounts were rarely received or had little value when received. Massage Envy was able to identify total discounts to California-resident Former Members of only \$81,073 for retail items and \$10,730 for family discounts (compared to Massage Envy's internal valuation of forfeited prepaid massage services of \$22 million). <sup>9</sup>
Ability to transfer services	This benefit was not included in the services provided paid for with monthly dues. Massage Envy charges members \$10 to transfer a membership service. <sup>10</sup>
Ability to "split" or combine some member services	In the end, each member pays the same total price for the combined services. The value of "convenience" may be real, but it is too small to be measured.

A comparison to market prices for a generic one-hour massage further supports a finding that a value of \$56.00 per 50-minute massage is reasonable and conservative.

- According to a price elasticity study performed on behalf of Massage Envy by WestGroup Research in 2008, the average expected price for a generic one-hour massage was \$65.12.<sup>11</sup>
- According to a survey prepared by Harstad Strategic Research, Inc. in 2013, the national average cost (including tip) for a massage was \$69.00, and the national median cost (including tip) for a massage was \$60.00.
  - These costs have not changed significantly since surveying began in 2005.<sup>12</sup>
  - A survey prepared by Associated Bodywork & Massage Professionals in 2009 reported that the average massage session taken lasts one hour, and the vast majority of massages (78.5%) are 50-75 minutes in length.<sup>13</sup>

A reasonable estimate of the value of each 90-minute massage obtained from the Settlement Agreement is \$82.00.

As shown in **Exhibit H**, the average ratio of the cost of a 90-minute massage to a 50-minute massage is 1.47. As shown in **Exhibit I**, multiplying the value of a 50-minute massage by this ratio yields a value of a 90-minute massage of \$82.00.

A reasonable estimate of the value to Former Members of reinstatement of unutilized massages is \$179,000,000.

Massage Envy provided a spreadsheet summarizing the distribution of Former Members by the number of massages forfeited.<sup>14</sup> I applied the rules for the number of reinstated massages summarized in the Background section of this report to this distribution to calculate the number of reinstated massages available to the Former Members. This calculation is presented in **Exhibit J**, summarized in **Exhibit K** and **Exhibit L**, and summarized below.

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### Summary of Former Members, Forfeited Messages and Available Message Reinstatements

Number of Former Members	1,142,724
Number of forfeited messages	5,465,745
Average number of forfeited messages per member	4.8
Number of messages available to be reinstated	3,919,242
Percent of forfeited messages <sup>(b)</sup>	74%
Average number of message reinstatements available per member	3.4

As shown in **Exhibit J**, Former Members forfeited between 1 and 122 messages each, and each is entitled to between 1 and 91 message reinstatements. As shown in **Exhibit M**, the typical member takes 33 days between each message, an average of .922 messages per month.<sup>15</sup>

Given that Former Members must utilize all reinstated messages within six months, it is reasonable to assume each member will utilize at most six reinstated messages. Therefore, Former Members who forfeited more than nine messages might not utilize all message reinstatements available (Former Members who forfeited nine or messages are entitled to six or fewer reinstated messages; Former Members who forfeited ten or more messages are entitled to seven or more reinstated messages). However, relatively few Former Members (14%) forfeited more than nine messages (see **Exhibit K**). Therefore, 86% of Former Member will not expect to see the value of their settlement be restricted by the limit of 180 days to utilize reinstated messages.

Taking into consideration that 14% of Former Members who forfeited more than nine messages will be limited by the likelihood of utilizing no more than six reinstated messages during the 180-day redemption period, the expected number of messages utilized is as follows.

#### Summary of Expected Message Reinstatements Utilized Assume a Maximum of Six Reinstatements Utilized per Former Member

Expected number of message reinstatements utilized	3,104,255
Percent of forfeited messages <sup>(b)</sup>	59%
Average number of message reinstatements utilized per member	2.7

As shown in **Exhibit N**, multiplying the expected number of message reinstatements (which consist of 205,538 90-minute messages and 2,898,717 50-minute messages) by the value per message (\$82.00 and \$56.00, respectively) yields an expected value for reinstated messages of \$179,182,000. Rounding down yields:

**Expected Value of Reinstated Messages Utilized = \$179,000,000.**

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<sup>(b)</sup> In calculating the percentage, 90-minute messages are weighted by 1.5.

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It would not be unreasonable to expect that Former Members would be motivated to utilize as many reinstated massages as possible. If we assume Former Members will utilize reinstated massages as often as twice per month, for a total of twelve massages reinstated massages utilized during the 180-day reinstatement period, we obtain the statistics shown below, which are calculated in **Exhibit J**, **Exhibit L** and **Exhibit N**.

Summary of Message Reinstatement Utilization Results  
Assume a Maximum of Twelve Reinstatements Utilized per Former Member

Expected number of message reinstatements utilized	3,686,939
Percent of forfeited massages <sup>(b)</sup>	69%
Average number of message reinstatements utilized per member	3.2
Former Members with 12 or fewer reinstatements available (%)	97%
Expected value of reinstated massages utilized	\$212,000,000

If we do not limit the number of reinstated massages individual Former Members will be able to utilize, the expected value of reinstated massages utilized is \$225,000,000. This calculation is shown in **Exhibit N**.

A reasonable estimate of the value to Current Members of receiving an additional 30 days after leaving Message Envy to redeem any unutilized massages is \$36,000,000.

According to documents produced by Message Envy, as of December 2011 total current membership was approximately 1,100,000, and approximately 38,000 members discontinued their services each month (which equals 468,000 members per year).<sup>16</sup> This yields an annual attrition rate of 41.5%. According to documents produced by Message Envy, the total number of Current Members is 1,601,821,<sup>17</sup> yielding annual compound growth in membership from 2011 to 2014 of 13.3%. Extrapolating this growth and assuming the attrition rate remains constant, it is reasonable to expect annual attrition of 709,000 Current Members in 2015 and 803,000 Current Members in 2016, for a total of 1,512,000 membership terminations during the upcoming two years.

As shown below, based on data provided by Message Envy, I calculated that 46.4% of members whose Message Envy membership terminates may be expected to forfeit one or more massage service (this percentage already excludes members who redeemed all prepaid services during the first thirty days after termination).

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All Members of a California-address Massage Envy Franchise  
Whose Membership was Cancelled or Terminated  
December 7, 2007 through April 15, 2014<sup>18</sup>

	Number of Members	
Lost a membership service upon cancellation	137,213	46.4%
Did not lose a membership service	158,368	53.6%
Total	295,581	100.0%

Therefore, it is reasonable to expect that in the upcoming two years 702,000 Current Members (i.e., 46.4% of 1,512,000 Current Members who will terminate) will be able to take advantage of the additional month provided under the Settlement Agreement to redeem an unutilized massage after termination. Given that, on average, members take 0.922 massages per month,<sup>19</sup> it is reasonable to assume terminating Current Members will be able to redeem 647,000 additional massages (i.e.,  $0.922 \times 702,000$ ) as a result of the additional month provided under the Settlement Agreement to redeem unpaid massages. Multiplying the 647,000 additional redeemed massages by the value per massage of \$56.00 calculated in **Exhibit G** yields:

**Value of Additional Redeemed Massages to Current Members = \$36,000,000.**

The calculation of the value to Current Members to receiving an additional 30 days after termination is summarized in **Exhibit O**. Finally, it is reasonable to assume Current Members who would have forfeited one massage on termination under the previous policy now will be able to utilize the redeemed massage within the sixty-day period. Therefore, the number of Current Members who terminate without forfeiting any massages will increase from 53.6% to 66.0% (i.e.,  $53.6\% + 46.4\% \times 26.8\%$ , where 26.8% is the percent of members expected to terminate with one forfeited massage [see **Exhibit K**]), and perhaps higher.



**Certifications and Limitations**

I have no present or prospective interest in any entity discussed in this report. I have no personal interest or bias with respect to the parties involved. My compensation is not contingent on an action or event resulting from the analyses, opinions or conclusions in, or the use of, this report. This report has been prepared for the specific purpose set forth herein and is intended for no other purpose. I reserve the right to revise or supplement these opinions in light of events and circumstances that may occur subsequent to the date of this report.

I attest under penalty of perjury the statements above are true.

Executed on April 20, 2015

At Santa Barbara, California



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Thomas M. Neches, CPA/ABV, CVA, CFE, CFF

Notes

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<sup>1</sup> Settlement Agreement, page 5.

<sup>2</sup> *ibid.*, page 7, 15-16.

<sup>3</sup> *ibid.*, page 4.

<sup>4</sup> *ibid.*, page 14.

<sup>5</sup> The Court noted in its 4/15/2014 Order (1) Granting Motion to Intervene; and (2) Granting in Part and Denying in Part Motion for Class Certification (16:7-13):

“Defendant’s Millenium computer system gathers information that makes it possible to generate a list of all California members who cancelled their membership or went into arrears, and the date each member joined and cancelled, the membership fees paid, the services used and products purchased, and the amount paid in each instance, as well as whether the service used was not charged because it was prepaid under the membership agreement. (Miller Depo. at 47-50, 52-54, 56, 61-71, 91-93, 108-09; Pls’ Reply Ex. D.)”

<sup>6</sup> AEO Confidential Millennium Summaries.xlsx, Tab MembershipDuesBreakdowns.

<sup>7</sup> 10/24/2014 Massage Envy Franchising, LLC’s Memorandum of Contentions of Fact and Law, 16:5-17-18.

<sup>8</sup> MEF-Hahn002069.

<sup>9</sup> Massage Envy Franchising, LLC’s Memorandum of Contentions of Fact and Law (16:18-22, 17:1-6). MEF-Hahn002069. 4/15/2014 Order (1) Granting Motion to Intervene; and (2) Granting in Part and Denying in Part Motion for Class Certification (18:17-25).

<sup>10</sup> Massage Envy Franchising, LLC’s Memorandum of Contentions of Fact and Law (17:11-12).

<sup>11</sup> “Massage Envy Price Elasticity Research,” WestGroup Research, March 5, 2008 (MEF-Hahn002797, 002803).

<sup>12</sup> [http://www.massagetherapy.com/media\\_metrics\\_message\\_clients.php](http://www.massagetherapy.com/media_metrics_message_clients.php), citing the Harstad Strategic Research 2013 Consumer Survey.

<sup>13</sup> [http://www.massagetherapy.com/media\\_metrics\\_message\\_clients.php](http://www.massagetherapy.com/media_metrics_message_clients.php), citing the 2009 ABMP Member Survey.

<sup>14</sup> ENV – Reinstated Massage Breakdown by Qty.xlsx.

<sup>15</sup> MEF-Hahn002069.

<sup>16</sup> MEF-Hahn036789.

<sup>17</sup> 2015-03-25 email from Cindy Ricketts to Bill Restis re: Hahn - class data.

<sup>18</sup> 2014-07-02 Declaration of Mathew Michuta, 2:11-15.

<sup>19</sup> MEF-Hahn002069.

## **Exhibit A**

### **Thomas M. Neches, CPA – Resume**

Thomas Neches, managing partner of Thomas Neches & Company LLP, provides accounting, financial, business valuation and statistical analyses to assist attorneys involved in litigation. Mr. Neches has testified as an expert in state and federal courts in Arizona, California, Florida, Kentucky, Missouri, Nevada, New York and Oregon. He is a Certified Public Accountant, Accredited in Business Valuation, a Certified Valuation Analyst, a Certified Fraud Examiner and is Certified in Financial Forensics. He received his BA in Mathematics and Literature from UC San Diego and his MS in Operations Research from UCLA.

Mr. Neches has testified to juries on behalf of both plaintiffs and defendants in antitrust, breach of contract, fraud, intellectual property, lender liability, personal injury and wrongful termination cases. Examples of the litigation issues he has addressed include lost profits, lost business value, determining a reasonable royalty and piercing the corporate veil. Representative industries include banking, entertainment, insurance, manufacturing, retail, securities and wholesale. Mr. Neches specializes in applying computer database and statistical techniques to assemble and analyze voluminous and complex data.

Mr. Neches has over thirty-seven years of professional experience. During the past twenty-eight years he has provided litigation services almost exclusively. Prior to forming Thomas Neches & Company in January 2000, he was Senior Partner of Simpson & Company, a firm of certified public accountants specializing in litigation services. Previously, he was a partner at Coopers & Lybrand (now known as PricewaterhouseCoopers) in its litigation services practice in Los Angeles. Prior to joining Coopers & Lybrand he was a manager in the management consulting group of Arthur Young & Company (now known as Ernst & Young), where he specialized in operations improvement, systems analysis and litigation consulting. Before that he was head of the technical staff at The Assessment Group, a consulting firm which conducted economic and cost analysis for the U.S. Navy. Mr. Neches has acted as a Judicial Arbitrator of the Superior Court of the State of California for the County of Los Angeles.

Mr. Neches was an Adjunct Professor at Loyola Law School during 2003 – 2013 and is an Approved California MCLE Provider. He has been an instructor in numerous regional and local courses on litigation services. Among other publications he has authored, Mr. Neches is the co-author of "Use of Expert Witnesses" in *Prosecuting and Defending Insurance Claims* (John Wiley & Sons, 1989).

Mr. Neches is a member of the American Institute of Certified Public Accountants, the National Association of Certified Valuators and Analysts, the Association of Certified Fraud Examiners, the American Statistical Association and the American Bar Association.

**Exhibit B**  
**Thomas M. Neches, CPA – Publications**

- "Use of Expert Witnesses," *Prosecuting and Defending Insurance Claims*, ed. Robert F. Cushman, Bruce W. Roznowski and William E. Simpson, (New York: John Wiley & Sons, 1989).
- "The Role of the Expert in Environmental Insurance Coverage Litigation," *Environmental and Toxic Tort Claims -- Insurance Coverage in 1990 and Beyond*, (Practicing Law Institute, 1990).
- "Settling CERCLA Actions," *Environmental Dispute Handbook: Liability and Claims*, ed. David A. Carpenter, Robert F. Cushman and Bruce W. Roznowski (John Wiley & Sons, 1991)
- "Expert Accounting Assistance in Intellectual Property Litigation," *Intellectual Property Litigation* (March 1992: 5-10).
- "Expert Assistance in Wrongful Termination Litigation," *Employment & Labor Relations Law Litigation* (Winter 1992: 24-28).
- "The Spoiler," *Verdicts & Settlements* (Los Angeles Daily Journal), April 30, 1999.
- Forward to *The Complete Guide to Spotting Accounting Fraud & Cover-Ups*, Martha Maeda (Atlantic Publishing Group, 2010)
- "Direct and Cross Examination of Financial Experts – Lessons from the Trenches," *Santa Barbara Lawyer* (July 2014: 10-11, 31)

**Exhibit C**  
**Thomas M. Neches, CPA**  
**Deposition and Trial Testimony**  
**For the period 04/21/2011 through 04/20/2015**

Side	Case Number	Case Name	Venue
DEF	BC 528691	<i>Juanita Patterson-Wright v. Housing Authority of the City of Los Angeles</i>	California Superior Court, Los Angeles County deposition 03/31/2015
DEF	BC 496533	<i>George Diego and Allan Corrales v. City of Los Angeles, et al.</i>	California Superior Court, Los Angeles County trial 03/16/2015 deposition 02/26/2015
DEF	30-2014-0070693 0-CU-OR-CJC	<i>Harbor Marina, LLC v. Golden Hills Properties, LLC</i>	California Superior Court, Orange County trial 02/24/2015 deposition 02/04/2015
DEF	BC490805	<i>Sa Young Hong, et al. v. Interpol Network, Inc, et al.</i>	California Superior Court, Los Angeles County deposition 01/28/2015
DEF	BC430809	<i>Sylvester Stewart and Ken Roberts v. Gerald Goldstein, et al.</i>	California Superior Court, Los Angeles County trial 01/21/2015 trial 01/20/2015 deposition 12/30/2014
DEF	72 517 00904 13 TNM	<i>Victor Perez Leon v. Vicente Del Rio</i>	American Arbitration Association trial 11/18/2014
PLN	BC523868	<i>Ronda D. Sutton v. Citibank, N.A., et al.</i>	California Superior Court, Los Angeles County trial 10/14/2014
DEF	1:13-CV-00336-A WI-BAM	<i>Derek Thomason v. City of Fowler, et al.</i>	United States District Court, Eastern District of California deposition 08/07/2014
PLN	3:12-cv-00153-D MS-BGS	<i>Gail Hahn, et al. v. Massage Envy Franchising, LLC</i>	United States District Court, Southern District of California deposition 05/13/2014

**Exhibit C**  
**Thomas M. Neches, CPA**  
**Deposition and Trial Testimony**  
**For the period 04/21/2011 through 04/20/2015**

<b>Side</b>	<b>Case Number</b>	<b>Case Name</b>	<b>Venue</b>
DEF	SC 104853	<i>Patrón Spirits International AG v. Ajendra Singh</i>	California Superior Court, Los Angeles County deposition 02/25/2014
PLN	SC119066	<i>California Hand Center, Inc. v. J. Timothy Katzen, et al.</i>	California Superior Court, Los Angeles County trial 01/29/2014 deposition 01/13/2014
DEF	72 505 00294 12 VIAM	<i>West Coast Transfer Service, Inc. v. Calex Engineering Company</i>	American Arbitration Association trial 11/18/2013 deposition 06/26/2013
PLN	PC050410	<i>Valorie Lenz Margalit, et al. v. Evershine Granites PVT. LTD, et al.</i>	California Superior Court, Los Angeles County deposition 05/03/2013
DEF	72 140 Y 06644 11 S1M	<i>William Morris Endeavor Entertainment, LLC v. Howard Schultz and Lighthearted Entertainment, Inc.</i>	American Arbitration Association trial 05/01/2013 deposition 04/10/2013
DEF	BC468353	<i>Overland Corners, LLC v. Lisa A. Chan, et al.</i>	California Superior Court, Los Angeles County trial 02/04/2013
PLN	BC444869	<i>Danny Huynh v. Seacrest Seafood Corporation, et al.</i>	California Superior Court, Los Angeles County trial 12/19/2012
PLN	BC463778	<i>Sabiha Khan v. Metropolitan Transportation Authority, et al.</i>	California Superior Court, Los Angeles County deposition 12/14/2012
PLN	GC042173	<i>Sabrina Hicks, et al. v. Huntington Hospital, et al.</i>	California Superior Court, Los Angeles County deposition 08/27/2012
DEF	CV 11-04054 MMM (CWx)	<i>BDO Remit (USA), Inc. v. Stichting BDO and BDO USA LLP</i>	United States District Court, Central District of California deposition 06/28/2012

**Exhibit C**  
**Thomas M. Neches, CPA**  
**Deposition and Trial Testimony**  
**For the period 04/21/2011 through 04/20/2015**

Side	Case Number	Case Name	Venue
PLN	00180143	<i>National Home Auction Company, LLC and National Home Auction Corporation v. Real Estate Disposition Corporation, et al.</i>	California Superior Court, Orange County deposition 04/10/2012
PLN	EC052660	<i>Sergie Aftandelian, et al. v. Luciano Gomez, M.D.</i>	California Superior Court, Los Angeles County trial 02/15/2012 trial 02/14/2012 deposition 10/27/2011
PLN	06-10316 "H"	<i>The GR Group, LLC v. Lafayette Insurance Company</i>	Louisiana District Courts, Parish of Orleans Civil District Court deposition 01/30/2012
PLN	1:10-CV-00411 LJO JLT	<i>E. &amp; J. Gallo Winery, et al. v. Proximo Spirits, Inc., et al.</i>	United States District Court, Eastern District of California -- Fresno Division deposition 10/19/2011
PLN	30-2009-0033323 3	<i>Peter Reilly v. Inquest Technology, et al.</i>	California Superior Court, Orange County trial 10/06/2011 trial 10/04/2011
PLN	2:08-cv-00442-H DM-PAL	<i>Aniplex, Incorporated v. The Upper Deck Company</i>	United States District Court, District of Nevada trial 09/23/2011
DEF	SC 107891	<i>Gina Mammana v. Greenrose, Inc. dba Conroy Flower's, et al.</i>	California Superior Court, Los Angeles County, West District trial 08/10/2011
PLN	S-1500-CV 261005 LPE	<i>The Citri-Lite Company, Inc. v. Cott Beverages, Inc.</i>	United States District Court, Eastern District of California trial 07/19/2011
PLN	623-989	<i>I&amp;A Properties, Inc. and KeyClick Outsourcing, Inc. v. St. Paul Travelers Insurance Company</i>	Louisiana State Court, 24th Judicial District Court, Parish of Jefferson deposition 04/27/2011

**Exhibit D**  
**Documents and Other Sources Relied Upon**

Description	Bates
2008-03-05 Massage Envy Price Elasticity Research	MEF-Hahn002791-2811
2010-01-01 Massage Envy Business Policies	MEF-Hahn031885
2010-02-25 Key Findings, Implications from Massage Envy Focus Groups	MEF-Hahn002250-63
2011-07-01 Driving Decision Making for Massage Envy Via Analytical Data Mining	MEF-Hahn036790-1
2011-07-15 Massage Envy Price Elasticity Research	
2012-09-01 Clinic Capacity Optimization Study	MEF-Hahn036788-9
2012-11-01 Massage Envy Franchising, LLC Operations Manual	MEF-Hahn030129-272
2013-02-01 Massage Envy Franchising, LLC Operations Manual	MEF-Hahn029504-7
2013-06-19 First Amended Class Action Complaint	
2014-04-14 Class Representatives' Memorandum of Points and Authorities in Support of Motion For Preliminary Approval of Class Action Settlement and Motion For Leave To File Second Amended Complaint	
2014-04-15 Order (1) Granting Motion to Intervene; and (2) Granting in Part and Denying in Part Motion for Class Certification	
2014-07-02 Declaration of Mathew Michuta	
2014-10-14 Class Representatives' Memorandum of Contentions of Law and Fact Pursuant To Local Rule 16.1(F)(2)	
2014-10-14 Massage Envy Franchising, LLC's Memorandum of Contentions of Fact and Law	
2014-12-03 Stipulation of Class Action Settlement and Release	
2014-12-04 Declaration of William R. Restis In Support of Unopposed Motion For Preliminary Approval of Class Action Settlement and Motion For Leave To File Second Amended Complaint	
2015-01-30 Reporter's Transcript of Proceedings - Motion Hearing	
2015-03-25 email from Cindy Ricketts to Bill Restis re: Hahn - class data	
2015-04-09 email from Lori Castaneda (Garden City Group) to Bill Restis and Cindy Ricketts re: Hahn - class data	
AEO Confidential Millennium Summaries.xlsx	
ENV - Reinstated Messages Breakdown by Qty.xlsx	



**Exhibit E**  
**California Former Members' Weighted Average Monthly Dues Rate**  
**and Expected Cost of Second Monthly Massage**

Number of Class Members <sup>[1]</sup>	Percent <sup>[1]</sup>	Dues Rates Paid by Class Members <sup>[1]</sup>	Ratio of Second Massage Cost to Monthly Dues <sup>[2]</sup>	Expected Cost of Second Monthly Massage <sup>[3]</sup>
108	0.1%	\$39.00	1.00	\$39.00
14	0.0%	\$44.00	0.80	\$39.00
24,669	20.6%	\$49.00	0.80	\$39.00
9,162	7.7%	\$54.00	0.80	\$42.98
85,481	71.4%	\$59.00	0.70	\$41.50
147	0.1%	\$59.99	0.70	\$42.20
104	0.1%	\$69.09	0.86	\$59.08
<b>119,685</b>	<b>100.0%</b>	<b>\$56.55</b>		<b>\$41.11</b>

<sup>[1]</sup>Source: *AEO Confidential Millennium Summaries.xlsx*, Tab *MembershipDuesBreakdowns*.

<sup>[2]</sup>Source: Exhibit F.

<sup>[3]</sup>(Dues Rates Paid by Class Members) × (Ratio of Second Massage Cost to Monthly Dues), but not less than \$39.00.

**Exhibit F**  
**Massage Envy Price Policies for Second Member Massage<sup>[1]</sup>**

Price Point	Monthly Dues	Second Member Massage	Ratio
Price Point 2	\$49.00	\$39.00	0.80
Price Point 3	\$59.00	\$39.00	0.66
Price Point 4	\$59.00	\$49.00	0.83
Price Point 5	\$59.00	\$39.00	0.66
Price Point 6	\$49.00	\$39.00	0.80
Price Point 7	\$69.00	\$59.00	0.86
Price Point 8	\$59.00	\$39.00	0.66
Average	\$49.00	\$39.00	0.80
Average	\$59.00	\$41.50	0.70
Average	\$69.00	\$59.00	0.86

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<sup>[1]</sup>Source: MEF-Hahn029672.

**Exhibit G**  
**Value of 50-Minute Massage**

A	Average Price for Massage 1	\$56.55	Exhibit E
B	Average Price for Massage 2	\$41.11	Exhibit E
C	Average Price if Two Massages per Month	\$48.83	$C = (A + B) \div 2$
D	Percent of Members Taking Two or More Massages per Month	7%	MEF-Hahn002069
E	Average Price per Monthly Massage	\$56.01	$E = D \times C + (1 - D) \times A$
F	<b>Value of a 50-Minute Massage</b>	<b>\$56.00</b>	F = E (rounded down)

**Exhibit H**  
**Massage Envy Price Policies for 1-Hour and 1.5-Hour Massages<sup>[1]</sup>**

Price Point	1 Hour	1.5 Hour	Ratio	Price Point	1 Hour	1.5 Hour	Ratio
Price Point 2				Price Point 6			
Introductory Rate	\$39.00	\$57.00	1.46	Introductory Rate	\$49.00	\$74.00	1.51
Non-Member	\$65.00	\$95.00	1.46	Non-Member	\$65.00	\$95.00	1.46
Valued Guest	\$55.00	\$81.00	1.47	Valued Guest	\$55.00	\$81.00	1.47
Price Point 3				Price Point 7			
Introductory Rate	\$39.00	\$57.00	1.46	Introductory Rate	\$59.00	\$84.00	1.42
Non-Member	\$78.00	\$114.00	1.46	Non-Member	\$118.00	\$168.00	1.42
Valued Guest	\$65.00	\$95.00	1.46	Valued Guest	\$100.00	\$143.00	1.43
Price Point 4				Price Point 8			
Introductory Rate	\$49.00	\$74.00	1.51	Introductory Rate	\$49.00	\$74.00	1.51
Non-Member	\$98.00	\$148.00	1.51	Non-Member	\$98.00	\$148.00	1.51
Valued Guest	\$69.00	\$104.00	1.51	Valued Guest	\$78.00	\$114.00	1.46
Price Point 5				Average			
Introductory Rate	\$49.00	\$74.00	1.51	Introductory Rate	\$47.57	\$70.57	1.483
Non-Member	\$78.00	\$114.00	1.46	Non-Member	\$85.71	\$126.00	1.47
Valued Guest	\$69.00	\$100.00	1.45	Valued Guest	\$70.14	\$102.57	1.462

<sup>[1]</sup>Source: Massage Envy Spa Business Policies, MEF-Hahn029672-5.

**Exhibit I**  
**Value of 90-Minute Massage**

A	Value of a 50-Minute Massage	\$56.00	Exhibit G
B	Average ratio of 90-massage to 50-massage cost	1.47	Exhibit H
C	Average price of a 90-minute massage	\$82.32	$C = A \times B$
D	<b>Value of a 90-Minute Massage</b>	<b>\$82.00</b>	D = C (rounded down)

## Exhibit J

## Distribution of Former Members, Available Massage Reinstatements and Expected Massage Reinstatement Utilization

								Max 6 Messages Utilized			Max 12 Messages Utilized		
Length of Reinstated Message (Minutes)	Number of Former Members	Messages Forfeited Per Former Member	Cumulative Percent of Former Members	Total Messages Forfeited	Messages Reinstated per Former Member	Available Reinstated Messages	Available Percent Reinstated	Expected Messages Reinstated per Former Member	Expected Messages Reinstated	Expected Percent Reinstated	Expected Messages Reinstated per Former Member	Expected Messages Reinstated	Expected Percent Reinstated
50	305,881	1	27%	305,881	1	305,881	100%	1	305,881	100%	1	305,881	100%
90	205,538	2	45%	411,076	1	205,538	75%	1	205,538	75%	1	205,538	75%
50	135,747	3	57%	407,241	2	271,494	67%	2	271,494	67%	2	271,494	67%
50	163,543	4 - 5	71%	667,785	3	490,629	73%	3	490,629	73%	3	490,629	73%
50	58,197	6	76%	349,182	4	232,788	67%	4	232,788	67%	4	232,788	67%
50	44,983	7	80%	314,881	5	224,915	71%	5	224,915	71%	5	224,915	71%
50	70,127	8 - 9	86%	572,690	6	420,762	73%	6	420,762	73%	6	420,762	73%
50	27,494	10	89%	274,940	7	192,458	70%	6	164,964	60%	7	192,458	70%
50	23,468	11	91%	258,148	8	187,744	73%	6	140,808	55%	8	187,744	73%
50	35,373	12 - 13	94%	442,163	9	318,357	72%	6	212,238	48%	9	318,357	72%
50	11,448	14	95%	160,272	10	114,480	71%	6	68,688	43%	10	114,480	71%
50	9,207	15	95%	138,105	11	101,277	73%	6	55,242	40%	11	101,277	73%
50	13,668	16 - 17	97%	225,522	12	164,016	73%	6	82,008	36%	12	164,016	73%
50	5,250	18	97%	94,500	13	68,250	72%	6	31,500	33%	12	63,000	67%
50	4,404	19	98%	83,676	14	61,656	74%	6	26,424	32%	12	52,848	63%
50	6,929	20 - 21	98%	142,045	15	103,935	73%	6	41,574	29%	12	83,148	59%
50	2,850	22	98%	62,700	16	45,600	73%	6	17,100	27%	12	34,200	55%
50	2,480	23	99%	57,040	17	42,160	74%	6	14,880	26%	12	29,760	52%
50	3,910	24 - 25	99%	95,795	18	70,380	73%	6	23,460	24%	12	46,920	49%
50	1,576	26	99%	40,976	19	29,944	73%	6	9,456	23%	12	18,912	46%
50	1,298	27	99%	35,046	20	25,960	74%	6	7,788	22%	12	15,576	44%
50	2,221	28 - 29	99%	63,299	21	46,641	74%	6	13,326	21%	12	26,652	42%
50	883	30	99%	26,490	22	19,426	73%	6	5,298	20%	12	10,596	40%

## Exhibit J

### Distribution of Former Members, Available Message Reinstatements and Expected Message Reinstatement Utilization

Length of Reinstated Massage (Minutes)	Number of Former Members	Massages Forfeited Per Former Member	Cumulative Percent of Former Members	Total Massages Forfeited	Massages Reinstated per Former Member	Available Reinstated Massages	Available Percent Reinstated	Max 6 Massages Utilized			Max 12 Massages Utilized		
								Expected Massages Reinstated per Former Member	Expected Massages Reinstated	Expected Percent Reinstated	Expected Massages Reinstated per Former Member	Expected Massages Reinstated	Expected Percent Reinstated
50	754	31	100%	23,374	23	17,342	74%	6	4,524	19%	12	9,048	39%
50	1,282	32 - 33	100%	41,665	24	30,768	74%	6	7,692	18%	12	15,384	37%
50	534	34	100%	18,156	25	13,350	74%	6	3,204	18%	12	6,408	35%
50	457	35	100%	15,995	26	11,882	74%	6	2,742	17%	12	5,484	34%
50	757	36 - 37	100%	27,631	27	20,439	74%	6	4,542	16%	12	9,084	33%
50	291	38	100%	11,058	28	8,148	74%	6	1,746	16%	12	3,492	32%
50	290	39	100%	11,310	29	8,410	74%	6	1,740	15%	12	3,480	31%
50	466	40 - 41	100%	18,873	30	13,980	74%	6	2,796	15%	12	5,592	30%
50	179	42	100%	7,518	31	5,549	74%	6	1,074	14%	12	2,148	29%
50	161	43	100%	6,923	32	5,152	74%	6	966	14%	12	1,932	28%
50	273	44 - 45	100%	12,149	33	9,009	74%	6	1,638	13%	12	3,276	27%
50	116	46	100%	5,336	34	3,944	74%	6	696	13%	12	1,392	26%
50	102	47	100%	4,794	35	3,570	74%	6	612	13%	12	1,224	26%
50	151	48 - 49	100%	7,324	36	5,436	74%	6	906	12%	12	1,812	25%
50	65	50	100%	3,250	37	2,405	74%	6	390	12%	12	780	24%
50	57	51	100%	2,907	38	2,166	75%	6	342	12%	12	684	24%
50	99	52 - 53	100%	5,198	39	3,861	74%	6	594	11%	12	1,188	23%
50	35	54	100%	1,890	40	1,400	74%	6	210	11%	12	420	22%
50	31	55	100%	1,705	41	1,271	75%	6	186	11%	12	372	22%
50	41	56 - 57	100%	2,317	42	1,722	74%	6	246	11%	12	492	21%
50	14	58	100%	812	43	602	74%	6	84	10%	12	168	21%
50	14	59	100%	826	44	616	75%	6	84	10%	12	168	20%
50	20	60 - 61	100%	1,210	45	900	74%	6	120	10%	12	240	20%

## Exhibit J

### Distribution of Former Members, Available Message Reinstatements and Expected Message Reinstatement Utilization

Length of Reinstated Massage (Minutes)	Number of Former Members	Massages Forfeited Per Former Member	Cumulative Percent of Former Members	Total Massages Forfeited	Massages Reinstated per Former Member	Available Reinstated Massages	Available Percent Reinstated	Max 6 Massages Utilized			Max 12 Massages Utilized		
								Expected Massages Reinstated per Former Member	Expected Massages Reinstated	Expected Percent Reinstated	Expected Massages Reinstated per Former Member	Expected Massages Reinstated	Expected Percent Reinstated
50	9	62	100%	558	46	414	74%	6	54	10%	12	108	19%
50	8	63	100%	504	47	376	75%	6	48	10%	12	96	19%
50	15	64 - 65	100%	968	48	720	74%	6	90	9%	12	180	19%
50	4	66	100%	264	49	196	74%	6	24	9%	12	48	18%
50	5	67	100%	335	50	250	75%	6	30	9%	12	60	18%
50	9	68 - 69	100%	617	51	459	74%	6	54	9%	12	108	18%
50	1	70	100%	70	52	52	74%	6	6	9%	12	12	17%
50	4	72 - 73	100%	290	54	216	74%	6	24	8%	12	48	17%
50	1	74	100%	74	55	55	74%	6	6	8%	12	12	16%
50	1	79	100%	79	59	59	75%	6	6	8%	12	12	15%
50	1	84 - 85	100%	85	63	63	74%	6	6	7%	12	12	14%
50	1	104 - 105	100%	105	78	78	74%	6	6	6%	12	12	11%
50	1	122	100%	122	91	91	75%	6	6	5%	12	12	10%



## Exhibit J

### Distribution of Former Members, Available Message Reinstatements and Expected Message Reinstatement Utilization

Max 6 Messages Utilized			Max 12 Messages Utilized		
Expected Percent Reinstated	Expected Messages Reinstated	Expected Messages Reinstated per Former Member	Expected Percent Reinstated	Expected Messages Reinstated	Expected Messages Reinstated per Former Member
50%	3,104,255	2.7	67%	3,686,939	3.2
57%	2,898,717	3.1	69%	3,481,401	3.7
75%	308,307	1.5	75%	308,307	1.5

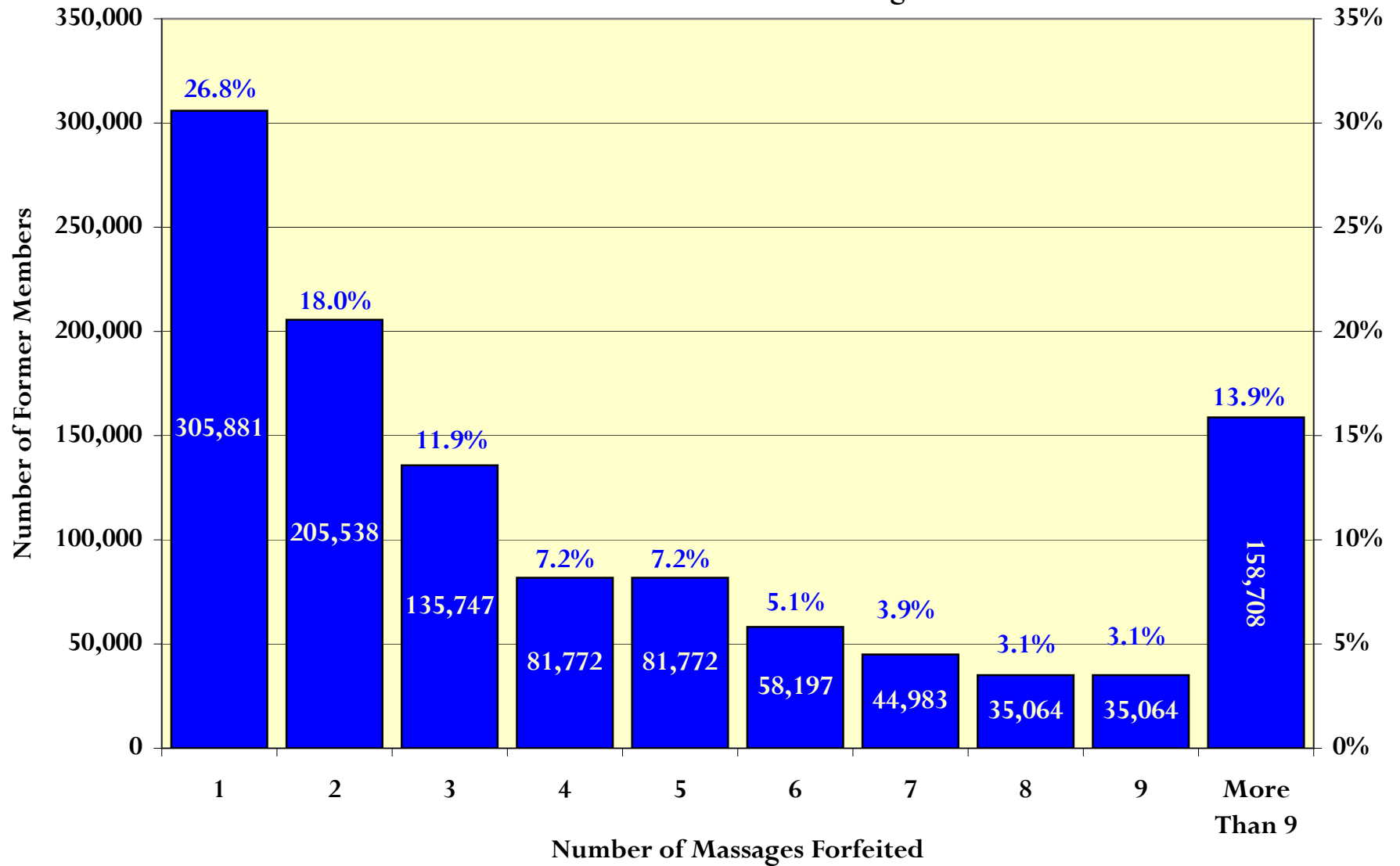
Totals Adjusted for 1 (90-minute message) = 1.5 (50-minute message)		
74%	4,022,011	3.5
73%	3,713,704	4.0
75%	308,307	1.5

Unadjusted Totals		
72%	3,919,242	3.4
73%	3,713,704	4.0
50%	205,538	1.0

Unadjusted Totals		
5,465,745	411,076	90-min
937,186		50-min
1,142,724		Total

Source: ENV - Reinstated Messages Breakdown by Qty.xlsx

**Exhibit K**  
**Distribution of Former Members and Messages Forfeited**



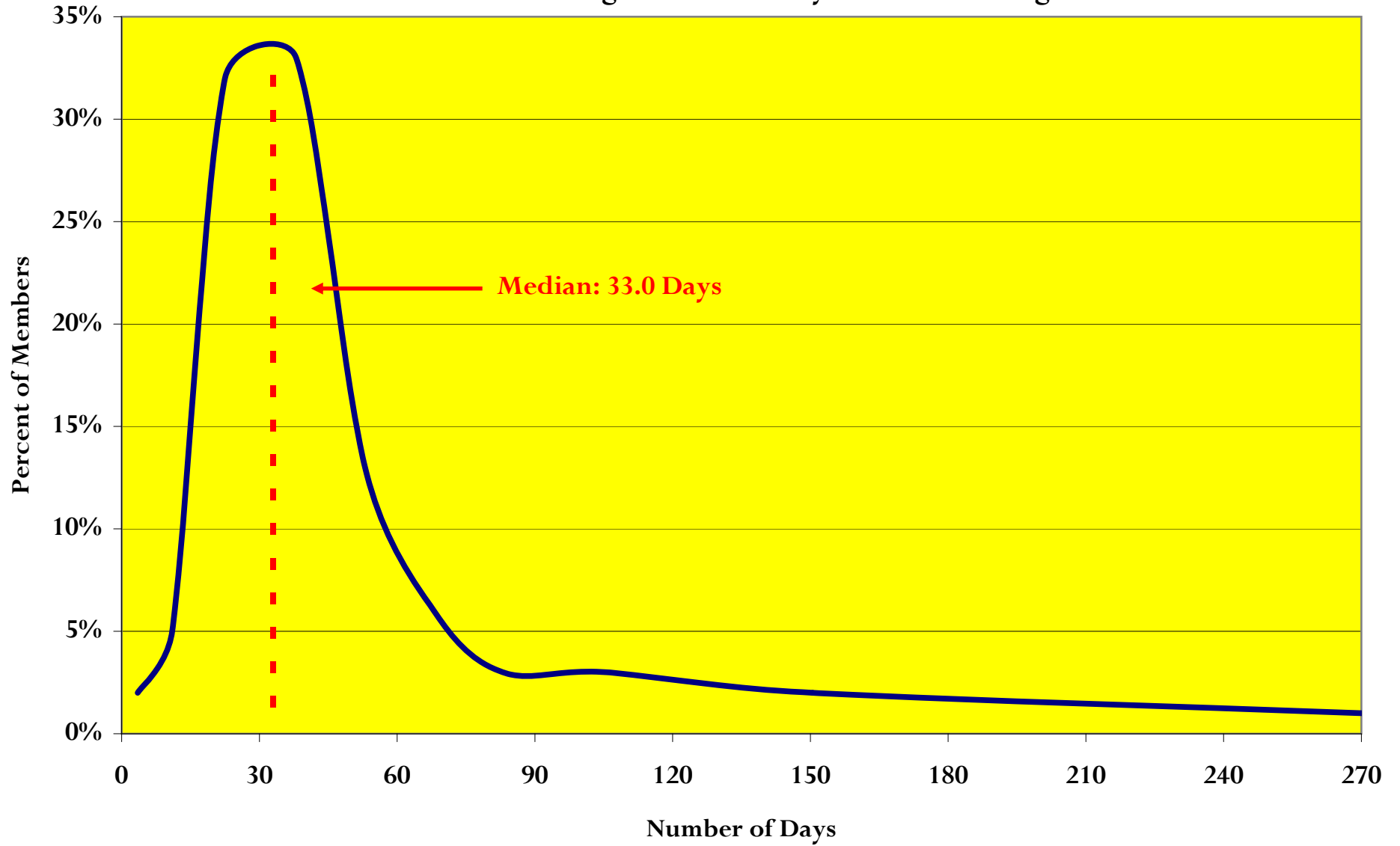
**Exhibit L**  
**Summary of Distribution of Former Members and Available Message Reinstatements<sup>[1]</sup>**

					Max 6 Messages Utilized			Max 12 Messages Utilized			
Length of Reinstated Message (Minutes)	Number of Former Members	Per Former Member	Average Messages Forfeited	Percent of Former Members	Total Messages Forfeited	Average Messages Available for Reinstatement per Former Member	Total Messages Available for Reinstatement	Percent of Forfeited Messages Available for Reinstatement <sup>[2]</sup>	Average Expected Reinstated Messages Utilized per Former Member	Expected Total Reinstated Messages Utilized	Expected Percent of Forfeited Messages Utilized <sup>[2]</sup>
90-min	205,538	2.00	18%		411,076	1.00	205,538	75%	1.00	205,538	75%
50-min	937,186	5.39	82%		5,054,669	3.96	3,713,704	73%	3.09	2,898,717	57%
Total	1,142,724	4.78	100%		5,465,745	3.43	3,919,242	74%	2.72	3,104,255	59%

<sup>[1]</sup>Source: Exhibit J.

<sup>[2]</sup>Each 90-minute message reinstated is counted as 1.5 50-minute messages.

**Exhibit M**  
**Message Envy**  
**Distribution of Average Number of Days Between Messages**



Source: MEF-Hahn002069.

**Exhibit N**  
**Value of Reinstatement of Former Class Members' Unutilized Messages**

**Maximum of 6 Reinstated Messages Utilized Per Former Member**

Length of Reinstated Message (Minutes)	Number of Former Members	Number of Reinstated Messages Utilized	Value per Utilized Message	Total Value of Reinstated Messages Utilized
90-minute	205,538	205,538	\$82.00	\$16,854,000
50-minute	937,186	2,898,717	\$56.00	\$162,328,000
Total	1,142,724	3,104,255		\$179,182,000
<b>Rounded</b>				<b>\$179,000,000</b>

**Maximum of 12 Reinstated Messages Utilized Per Former Member**

Length of Reinstated Message (Minutes)	Number of Former Members	Number of Reinstated Messages Utilized	Value per Utilized Message	Total Value of Reinstated Messages Utilized
90-minute	205,538	205,538	\$82.00	\$16,854,000
50-minute	937,186	3,481,401	\$56.00	\$194,958,000
Total	1,142,724	3,686,939		\$211,812,000
<b>Rounded</b>				<b>\$212,000,000</b>

**Exhibit N**  
**Value of Reinstatement of Former Class Members' Unutilized Messages**

<b>Available</b>				
Length of Reinstated Message (Minutes)	Number of Former Members	Number of Reinstated Messages Utilized	Value per Utilized Message	Total Value of Reinstated Messages Utilized
90-minute	205,538	205,538	\$82.00	\$16,854,000
50-minute	937,186	3,713,704	\$56.00	\$207,967,000
Total	1,142,724	3,919,242		\$224,821,000
<b>Rounded</b>				<b>\$225,000,000</b>

**Exhibit O**  
**Value of One-Month Extended Redemption Period in Upcoming Two Years**

A	Monthly cancellations as of December 2011	38,000	MEF-Hahn036789
B	Total current membership as of December 2011	1,100,000	MEF-Hahn036789
C	Annual attrition percent	41.5%	$C = B \div A \times 12$
D	Total current membership as of December 2014	1,601,821	3/15/2015 e-mail re: Hahn - class data
E	2011 - 2014 compound annual membership growth	13.3%	$E = (D \div B)^{(1/3)} - 1$
F	Expected cancellations in 2015	709,000	$F = E \times (D + (1 + E) \times D) \div 2$
G	Expected cancellations in 2016	803,000	$G = (1 + E) \times F$
H	Total expected cancellations in upcoming two years	1,512,000	$H = F + G$
I	Percent of members who forfeit massages at cancellation	46.42%	2014-07-02 Declaration of Mathew Michuta, 2:11-15
J	Expected cancellations in upcoming two years with forfeited massages	702,000	$L = J \times K$
L	Median days between massage	33	MEF-Hahn002069
M	Expected number of massages per month	0.922	$M = 365 \div L \div 12$
N	Expected number of redeemed massages in the upcoming two years	647,000	$N = I \times M$
O	Value per redeemed massage	\$56.00	Exhibit G
P	Value of one-month extended redemption period in upcoming two years	\$36,232,000	$P = N \times O$
Q	<b>Value (rounded)</b>	<b>\$36,000,000</b>	